

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**YANIRA DIAZ**

Claimant

VS.

**LIFE CARE CENTER OF WICHITA**

Respondent

AND

**OLD REPUBLIC INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,013,868

**ORDER**

Respondent appeals the July 23, 2004 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was referred to Philip R. Mills, M.D., as a neutral physician to perform an evaluation on claimant for "diagnosis, causation opinion and treatment recommendations, if any."

Respondent contends that claimant failed to prove that she suffered accidental injury arising out of and in the course of her employment as her job did not require repetitive activities which could have led to the carpal tunnel condition diagnosed and treated by George L. Lucas, M.D. Claimant contends that the Appeals Board (Board) does not have jurisdiction to review this Order, as the Order does not make a determination on causation, but instead refers claimant to Dr. Mills for an opinion on causation. Claimant contends the dispute on causation raised between Dr. Lucas and claimant's examining doctor, Pedro A. Murati, M.D., justifies the referral by the Administrative Law Judge (ALJ) pursuant to K.S.A. 44-516.

**ISSUES**

- (1) Does the Board have jurisdiction to consider this matter at this time or should the matter be dismissed pursuant to K.S.A. 44-534a and K.S.A. 44-551?

- (2) If the Board does have jurisdiction to consider this matter, has claimant proven that she suffered accidental injury arising out of and in the course of her employment?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant works as a CNA for Life Care Center, with the job involving bathing patients, feeding patients and moving and transferring patients. A question has been raised regarding whether claimant's activities were sufficiently repetitive to lead to the carpal tunnel condition diagnosed and treated by board certified orthopedic surgeon George L. Lucas, M.D. Dr. Lucas questioned the causation aspects of this case, finding that claimant's duties as a nurse do not involve repetitive activities normally associated with the development of carpal tunnel syndrome. Claimant was referred by her attorney to Pedro A. Murati, M.D., for an examination and evaluation regarding the cause of claimant's conditions, as well as what, if any, treatment recommendations are appropriate. Dr. Murati opined that, within a reasonable degree of medical probability, claimant's medical condition was a direct result of her work-related injury during her employment with respondent.

The ALJ, in the July 23 Order, refers claimant to Dr. Mills for "diagnosis, causation opinion and treatment recommendations, if any." The Order of the ALJ does not reflect whether the ALJ made a determination regarding what, if any, cause exists for claimant's ongoing difficulties.

In workers' compensation litigation, it is claimant's burden to prove her entitlement to benefits by a preponderance of the credible evidence.<sup>1</sup>

However, not every alleged error in law or in fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues which are deemed jurisdictional:

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely written claim and timely notice of the accidental injury?

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<sup>1</sup> K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

(4) Is there any defense which goes to the compensability of the claim?<sup>2</sup>

Additionally, the Board may review those preliminary hearing orders where it is alleged that a judge has exceeded his or her jurisdiction or authority.<sup>3</sup>

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.<sup>4</sup>

K.S.A. 44-555c(a) states, in part:

The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge.

The Board is, therefore, limited to determining issues which have been previously decided by an administrative law judge. In this instance, the Board finds that the ALJ has yet to make the determination regarding what, if any, factors led to claimant's ongoing carpal tunnel syndrome. The referral to Dr. Mills was specifically, although not exclusively, to obtain a causation opinion. The Board, therefore, finds that until the ALJ makes a determination regarding whether claimant suffered accidental injury arising out of and in the course of her employment, the Board does not have jurisdiction to determine that issue. This matter, therefore, is dismissed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated July 23, 2004, should be, and is hereby, dismissed. The Board does not retain jurisdiction over this matter and, should later rulings by the Administrative Law Judge lead to additional appeals, the appropriate filings must be undertaken by the parties involved.

**IT IS SO ORDERED.**

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<sup>2</sup> K.S.A. 44-534a.

<sup>3</sup> K.S.A. 2002 Supp. 44-551.

<sup>4</sup> *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D. No. 512*, 235 Kan. 927, 683 P.2d 902 (1984).

Dated this \_\_\_\_ day of September 2004.

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BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director